

DEPARTMENT OF HEALTH SERVICES

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TO: All County Welfare Directors
All County Administrative Officers
All County Medi-Cal Program Specialists/Liaisons

Letter No.: 94-62

LONG-TERM CARE AND INCOMPETENT MEDI-CAL APPLICANTS

This letter is in response to a variety of questions received by the Department of Health Services (DHS) concerning individuals in Long-Term Care (LTC) who may be incompetent (unable to act on their own behalf in business and personal matters (Title 22, CCR Section 50032)), and DHS policy regarding who may file a Medi-Cal application for and complete the application process for these individuals.

I. WHO MAY APPLY

Whether or not the LTC patient is incompetent, anyone who knows of an individual's need may apply for Medi-Cal benefits on their behalf by completing and filing the SAWS 1 initial application form. Any applicant may have assistance from another, but a competent person is responsible for providing all necessary information and verifications during the face-to-face interview and for completing all documents. The county welfare department (CWD) must determine if the LTC patient is mentally competent to fulfill these duties. The eligibility worker (EW) may reach a competency decision by one of the following methods:

- 1) Calling the LTC facility and inquiring as to the patient's ability to handle his/her own affairs;
- 2) Obtaining a statement from the patient's physician;
- 3) Making a "home visit" to the facility to communicate with the individual; or
- 4) Obtaining satisfactory evidence from family members which would provide the EW with sufficient reason to believe that the LTC individual is incapable of handling his/her affairs. Such evidence may include conservatorship documents or a written statement from a family member stating that the individual is unable to complete the application process without assistance.

Question #1: If an LTC patient is not mentally competent to complete the application process, under what circumstances can a nursing facility staff member complete the process?

Answer #1: Anyone knowing the need of a person to obtain Medi-Cal benefits may complete and file the SAWS 1 application (Title 22, CCR section 50143 (a)). However, for anyone other than the applicant or the applicant's spouse to complete the Statement of Facts, appear in lieu of the applicant at the required face-to-face interview, or fulfill any other eligibility requirement, the following requirements apply:

The Statement of Facts must be completed, in rank order, by the applicant, the applicant's spouse, or, if the applicant has a conservator, guardian or executor, then the conservator, guardian or executor (Title 22, CCR Section 50163).

If there is no spouse, conservator, guardian or executor and the applicant is incompetent, then the following steps must be taken:

The county department shall evaluate the applicant's circumstances and determine whether or not there is a need for protective services. {Title 22, CCR Section 50163 (3)(A)}

If a need for protective services is not found, then the Statement of Facts

...may be completed and signed on the applicant's behalf by a relative, a person who has knowledge of the applicant's circumstances, or a representative of a public agency or the county department. {Title 22, CCR Section 50163 (3)(B)}

The phrase, "a person who has knowledge of the applicant's circumstances", may be interpreted in a broad sense. The office manager, administrator or social worker of a nursing facility MAY have sufficient information and knowledge of the applicant's circumstances if the individual's income/property are known to them. Many nursing facilities maintain a trust account for their patients in which the patient's income is automatically deposited and funds dispersed by the facility. In these instances, if no other family member is involved and protective services are not warranted, the facility staff person may file the SAWS 1 and complete the eligibility process.

Additionally, any other individual who can meet this requirement may act on behalf of an incompetent person. The County Welfare Department (CWD) worker must ensure, however, that the individual does, in fact, have specific knowledge to handle the patient's application for Medi-Cal.

II. DILIGENT SEARCH

Ultimately, the eligibility worker may assume total control of a Medi-Cal case if;

- the applicant is unable to apply for or complete a Medi-Cal eligibility determination process due to incompetency, or being in a comatose condition or suffering from amnesia (Title 22, Section 50163 (3)(D)); or

- the applicant does not have a spouse, conservator, guardian or executor (Title 22, Section 50163 (3)).

It is also DHS policy that if an applicant has a representative assuming case management responsibilities due to the applicant's mental condition, the CWD may take over the case management should the representative become non-cooperative or if contact is lost.

In this situation, the EW must refer the case to protective services to determine if the public guardian or adult protective service staff should become the responsible agency. If not, the EW must undertake a diligent search of known information to determine eligibility. If the applicant is eligible, the EW will complete and sign the MC 210 Statement of Facts. Additionally, the MC 210 must be countersigned by another representative of the CWD who shall also;

- confirm, by personal contact, the applicant's inability to act on his own behalf (Title 22, CCR Section 50163 (3) (D) 1).

Title 22, CCR Section 50166, further specifies the actions that the county or the representative of a public agency must take in this situation:

- (1) Perform a diligent search to obtain available information regarding the applicant's circumstances applicable to Medi-Cal eligibility determination.
- (2) Complete the Statement of Facts based upon information obtained as a result of the diligent search.
- (3) Establish disability in accordance with Section 50167 (a)(1).

LTC applicants should not be denied Medi-Cal due to the non-cooperation of the individual acting on their behalf. In these cases, unless a suitable individual is located, the non-cooperative individual should be notified that the application is denied. The CWD should then proceed by filing a second SAWS 1 as well as an application for retroactive coverage if the second SAWS 1 is filed after the month in which the initial SAWS 1 was submitted (Welfare & Institutions Code, Section 14016.2). The CWD should proceed with diligent search procedures in order to make the appropriate eligibility determination.

In situations where it appears likely that the LTC patient's income and/or property may be or is being exploited by another, the CWD should:

- notify the source agency where the income originates (Social Security Administration, Veterans' Administration, etc.). If the CWD receive information that the income will temporarily cease until a representative payee is found, the CWD should regard the income as unavailable and not count it toward a share of cost; or
- refer the case to the public guardian, adult protective services (APS) or the LTC Ombudsman if it appears that a bank account or other property may have been exploited. Once the referral has been made to the public guardian, APS or the LTC ombudsman and they have responded indicating that they are taking steps to recover the property, the CWD should view that property as unavailable until the property has been seized.

III. WAYS TO PERFORM A DILIGENT SEARCH

A variety of methods are available to the EW to perform a diligent search to obtain available information of the applicant's circumstances in order to determine eligibility. To investigate income the EW may use the following:

- IEVS for Social Security and Supplemental Security Income (SSI) benefits, Unemployment Insurance Benefits, Veterans Benefits. The EW should be aware that Title 22, CCR Section 50167.2(c) states that the county shall submit information on persons in LTC to IEVS only at application and at the annual redetermination.;
- TPQY for Social Security or SSI benefits;
- the county Veteran's Service Office for VA benefits including pensions and insurance;
- bank statements which show an automatic deposit which identifies the source of the income; and
- additional third party contacts which shall be fully notated in the case narrative.

For investigation of property the EW may:

- use the CA 60 to request bank balance information from local banking institution(s), if known;
- telephone a recognized stock exchange broker, if the EW is aware of stocks held, to determine their current sales value or establish the current selling price through listings in a current newspaper (Title 22, Section 50167(J)1, 50167(j)2);
- contact the County Tax Assessor's Office to determine the existence of real property held in the applicant's name and the assessed value; and
- IEVS to identify the existence of any interest bearing accounts.

Other methods outlined in Title 22, Section 50167 should be followed but the EW is not limited to those identified.

IV. GENERAL QUESTIONS

Question #1: When a nursing facility or other medical provider provides the CWD with a MC 1708 (Medical Report - Medical Assistance Only) to substantiate mental incompetency, may the CWD regard all resources such as bank accounts, etc. as unavailable?

Answer #1: No. The availability of property must be determined separately from the incompetency issue. Even if the applicant is regarded as incompetent (this includes individuals in a comatose or unconscious state) and unable to handle his/her own affairs, if another individual (family member, friend, etc.) can get access to the property then it must be regarded as available. Many elderly persons have friends or relatives listed on bank accounts and this joint access situation should be determined. If the incompetent individual is the only person who has access, the account will be regarded as unavailable. Form MC 1708 will no longer be used by DHS. There are other acceptable ways to verify incapacity and disability.

Question #2: After an LTC applicant has been determined to be incompetent, does he/she have to sign and complete an Appointment of Representative form?

Answer #2: No. A Medi-Cal applicant who is incompetent is presumably incapable of demonstrating the required knowledge and ability necessary to designate an authorized representative. An Appointment of Representative form would not be appropriate in these instances. No written authorization is required for an individual to assist an incompetent person to apply for benefits.

Question #3: If an LTC patient is competent, does she/he have to sign and complete the AR form?

Answer #3: Yes, if the applicant is designating someone, other than a family member, to act on his/her behalf (Title 22, CCR Sections 50143, 50157, 50163(a)), the applicant must sign and complete an AR form. In this situation the applicant must be given the same rights and responsibilities under the law and Medi-Cal regulations to participate in the application process.

Question #4: When is the DHS 7068 Public Guardian/Conservator or Applicant Beneficiary Representative Responsibilities form necessary?

Answer #4: The DHS 7068 form is required when an applicant, whether in a nursing facility or not, has a public guardian, conservator or a representative due to incompetence. This form is being revised and updated and will be retitled "Responsibilities of Public Guardian/Conservators or Applicant/Beneficiary Representatives". The DHS 7068 form sets forth the responsibilities of those individuals to the incompetent applicant/beneficiary as court appointed or volunteer representatives. The DHS 7068 form should be given to the representative at application and redetermination.

When the revised DHS 7068 form is available counties will be notified.

If you have any other questions about LTC beneficiaries and the application process, please direct them to Gary Varner of my staff at (916) 654-5321.

Sincerely,
ORIGINAL SIGNED BY
GLENDA ARELLANO for
Frank S. Martucci, Chief
Medi-Cal Eligibility Branch

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